

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KRISTAL D. WRIGHT**

Claimant

VS.

**RUBBERMAID SPECIALTY PRODUCTS**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 1,000,695

**ORDER**

Respondent appeals the September 16, 2002 Order of Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

Respondent, in its Application for Review to the Appeals Board (Board), listed the following issues for consideration:

“(1) All appealable issues.”

In reviewing the transcript from the motion hearing of September 10, 2002, which was the basis for this decision, it is apparent that respondent’s dispute centers on the appropriate health care provider and who, between claimant and respondent, gets to determine which health care provider will be authorized. A second issue arose regarding whether, under *Hinton*,<sup>1</sup> respondent can be prohibited from using a medical case manager. Additionally, in respondent’s brief to the Board, the following issues were raised.

- (1) Did the Administrative Law Judge exceed her jurisdiction and violate respondent’s due process rights by revoking Dr. Moskowitz’s authorization and appointing Dr. Abay as the authorized treating

---

<sup>1</sup> *Hinton v. The Signature Group*, No. 199,632, 1996 WL 100474 (Kan. WCAB Feb. 23, 1996).

physician without adherence to the statutory requirements under K.S.A. 44-534 or K.S.A. 44-534a?

- (2) Were respondent's due process rights violated when no seven-day notice of intent letter was provided to respondent in violation of K.S.A. 44-534a?
- (3) Were respondent's due process rights violated when no application for hearing was filed with the Director requesting a change of treating physician from Dr. Moskowitz to Dr. Abay?
- (4) Were respondent's due process rights violated when the hearing was held with less than 20 days' notice, as is obligated under K.S.A. 44-534(a)?
- (5) Were respondent's due process rights violated when both the letter from claimant's attorney to Paul S. Stein, M.D., and Dr. Stein's response were admitted into evidence after having been provided to respondent's attorney only minutes before the hearing of September 10, 2002?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file and for the purpose of preliminary hearing, the Board finds that the appeal of the respondent should be dismissed.

Respondent raised two issues at preliminary hearing for consideration. The first issue dealt with the dispute over who would provide medical care to claimant. The second issue dealt with claimant's Motion to prohibit respondent from using a medical case manager, citing *Hinton*. The Board acknowledges that this matter came to the Administrative Law Judge on claimant's Motion to direct respondent to cease and desist from attempting to direct and control the authorized medical care and to terminate the medical case management in its entirety. While the matter came to the Administrative Law Judge on a motion, it is apparent from a review of the transcript and the arguments of the parties that the real dispute in this matter centers around who has the authority or the right to dictate the authorized treating physician. Therefore, the dispute centers on claimant's entitlement to medical care, which is a preliminary hearing issue under K.S.A. 44-534a. The Board will, therefore, treat this matter as an appeal from a preliminary hearing.

K.S.A. 44-534a limits appeals from preliminary hearings to disputes centering around whether an employee suffered an accidental injury, whether the injury arose out of and in the course of employment, whether notice is given or claim timely made, or whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Board on appeal from preliminary hearings.<sup>2</sup> Additionally, appeals from preliminary hearings are reviewable if it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing.<sup>3</sup> With regard to whether claimant or respondent is allowed to determine the medical care and from whom it will be provided, the Board finds it does not have jurisdiction to consider that issue, as it is a preliminary hearing issue well within the jurisdiction of the Administrative Law Judge to determine.

Respondent, however, raises numerous other issues in its brief to the Board, dealing with a multitude of due process violations allegedly occurring at the hearing of September 10, 2002. K.S.A. 44-555c states in part:

(a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.

The Board has held on numerous occasions, and continues to hold, that it will not hear issues presented for the first time on appeal to the Board. The statute mandates that the Board's consideration be on issues presented to the administrative law judge. A review of the September 10, 2002 transcript fails to elicit any jurisdictional issues dealing with respondent's due process rights being raised to the Administrative Law Judge. In fact, when asked about claimant's attorney's letter to Dr. Stein and Dr. Stein's response, respondent's attorney stipulated to the admissibility of those documents. Therefore, the issues raised in respondent's brief for the first time to the Board are not properly before the Board for consideration and are also dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated September 16, 2002, remains in full force and effect and the appeal of respondent in this matter should be, and is hereby, dismissed.

---

<sup>2</sup> K.S.A. 44-534a(a)(2).

<sup>3</sup> K.S.A. 2001 Supp. 44-551(b)(2)(A).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2002.

---

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant  
Terry J. Torline, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation